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August 20, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 27, 2008

Case Number: TSO-0617

This decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") for a DOE access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's request for an access authorization should be granted. For the reasons detailed below, it is my decision that the Individual's request for an access authorization should not be granted at this time.

**I. BACKGROUND**

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) local security office (LSO), informing the Individual that information in the possession of the DOE created a substantial doubt pertaining to his eligibility for an access authorization.<sup>1</sup> See Notification Letter, February 5, 2008.

The Notification Letter stated that the Individual's responses on a December 2005 Questionnaire for National Security Positions (QNSP) and in an October 2004 Letter for Reconsideration regarding his application for access authorization where he provided inaccurate information regarding his use of alcohol, raised security concerns under 10 C.F.R. § 710.8(f) (Criterion F).<sup>2</sup> In the October 2004 Letter for Reconsideration, the Individual stated that he "had not consumed alcohol in the past four years." See Notification Letter. On the December 2005 QNSP, the Individual stated that he consumed a drink in February 2004 which he did not know contained alcohol at the time. *Id.* However, during a March 2007 Personnel Security Interview (PSI), the Individual "admitted that he intentionally lied [regarding the February 2004 drink and his

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<sup>1</sup> Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

<sup>2</sup> Criterion F pertains to false statements or misrepresentations by an individual during the course of an official inquiry regarding the individual's eligibility for access authorization, including responses during personnel security interviews or on security questionnaires. Such statements raise serious doubts regarding the individual's honesty, reliability, and trustworthiness.

knowledge that it contained alcohol]” because “he thought he would not get his security clearance if he told the truth.” *Id.*

Under Criterion F, the Notification Letter also cited the Individual’s inconsistent statements to two DOE consultant-psychiatrists regarding his history of illegal drug use. During an evaluation in October 1999, he told the first DOE consultant-psychiatrist that he had never tried any illegal drugs. In October 2007, he told a second DOE consultant-psychiatrist that “he smoked marijuana for a period of two years when he was in high school (1971-1973).” *Id.*

Finally, the Notification Letter also cited security concerns under 10 C.F.R. § 710.8(l) (Criterion L).<sup>3</sup> According to the Letter, the Individual failed to list all applicable arrests on his December 2005 QNSP, despite having been advised as to the importance of listing all arrests during a June 1999 PSI and during an earlier administrative review hearing in June 2000. Question 23 of the QNSP asks, in relevant part, whether an individual has ever been charged with or convicted of any felony offense; whether an individual has ever been charged with or convicted of any offenses related to alcohol; and, whether the individual has been arrested or convicted of any other offenses in the last seven years. *See* DOE Ex. 7. In response to question 23, the Individual listed a 1997 arrest for Driving While Intoxicated (DWI). According to the Notification Letter, the Individual omitted three other DWI arrests which occurred between 1983 and 1997. *See* Notification Letter.

In addition, the Letter states that the Individual falsified or omitted information “during the security clearance process” despite having signed security acknowledgements in September 1998, February 2003, and December 2005, certifying that he understood that he was not to do so. *Id.*

Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. *See* Individual’s Letter, February 29, 2008. At the hearing, the Individual presented his own testimony, as well as the testimony of his girlfriend, a friend, his brother-in-law, and a psychologist. The Individual was assisted during the hearing by a friend, who also testified. The DOE counsel did not present any witnesses.

## **II. HEARING TESTIMONY**

### **A. The Individual**

The Individual discussed the various concerns cited in the Notification Letter. Regarding the information he provided about his alcohol use in the October 2004 Letter for Reconsideration, he stated that he had not consumed alcohol since 2000 and he did not mention the February 2004 drink because he “didn’t think it was a real big deal to mention ... since it was so minute, and it was just one little thing.” Transcript (“Tr.”) at 83. He then stated that at the time he wrote the letter he had forgotten about the February 2004 drink. He added, “then about a day after I mailed

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<sup>3</sup> Criterion L concerns refer to conduct tending to show that the Individual is “not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l).

the letter, I thought, ‘oh, shoot, I should have mentioned [the drink] also.’” Tr. at 84. The Individual decided that rather than send in a supplementary letter regarding the February 2004 drink, he would wait until he was called in for an interview and explain it because he believed “it would create confusion” to send a second letter. Tr. at 86. He added, “I’d rather they asked me personally, face-to-face, so I could tell them my explanation.” Tr. at 87.

The Individual admitted that he also lied about his February 2004 alcoholic drink on the December 2005 QNSP. Tr. at 89. He stated, “I really wanted to get my clearance ... And I don’t consider these huge lies to where I can’t be trusted with national security.” Tr. at 90-91.

Regarding his inconsistent statements to two DOE consultant-psychiatrists, the Individual attributed the inconsistency to the fact that the two psychiatrists asked the question differently. He stated that he believed the first psychiatrist was asking him about his history of illegal drugs while employed by the DOE contractor. Tr. at 95. The Individual stated, “If [the first psychiatrist had asked] ‘have you in your whole entire life ever done illegal drugs, I would have said ‘in high school I did,’ but that’s not what he asked me. Now, [the second psychiatrist] did.” *Id.* The Individual admitted, however, that immediately preceding the question about his history of drug use, the first psychiatrist had questioned him about his personal background in general, including his history before his employment. *Id.*

The Individual also discussed his omission of various arrests on the December 2005 QNSP. The Individual has four DWI arrests in his background between 1983 and 1997. Tr. at 99. He stated that he did not list all of the arrests on the QNSP because he assumed that DOE knew about them since they were in his file. Tr. at 98. Despite the fact that he believed DOE was already aware of the 1997 arrest, he listed it because it was the most recent arrest and he “had to list something.” Tr. at 100-101. He admitted, however, that on a 1998 QNSP, he did not list the most recent arrest, the 1997 DWI, but rather listed a 1989 arrest. Tr. at 106. Despite his explanation that he listed his most recent arrest on the forms, the Individual did not know why he did not list the most recent arrest on the 1998 QNSP. *Id.*; Tr. at 112. He added that he did not list the other three arrests “because there’s nowhere to put [them].” *Id.* He admitted, however, that he did attach a separate page with additional information in response to other questions. Tr. at 101.

The Individual did not feel that he was withholding information by omitting the three DWI arrests. He stated, “in my mind, I’m not leaving it out because everybody knows about it, so how am I leaving it out?” Tr. at 102. He added that he did not feel he “had to keep being repetitious with it.” Tr. at 101. He stated, “I did not lie about it, I just didn’t think it was significant enough, because it’s already in my file.” Tr. at 104. The Individual stated that no one told him to omit previously reported information on the December 2005 QNSP; he “just assumed” it was not necessary to include that information again. Tr. at 116.

The Individual stated that he will not omit information from security forms because “[he] know[s] the rules now.” Tr. at 108. He stated that, in the past, he always completed the form “in a hurried mode.” Tr. at 109. He believed that he understood the questions on the QNSP when he completed the form. Tr. at 116. He stated that, in the future, he “won’t get lazy” about

completing the form; rather, he will “take the necessary time to fill it out completely” and will ask for help if necessary. Tr. at 117.

#### **B. The Individual’s Girlfriend**

The Individual and his girlfriend have lived together for nearly ten years. Tr. at 56. According to his girlfriend, the Individual is a “good-hearted person.” Tr. at 57. The Individual’s girlfriend has never known him to do anything dishonest. *Id.* For example, she stated that they share household expenses and that he is “very dependable.” *Id.* The Individual’s girlfriend stated that the Individual has been very honest with her throughout their relationship and she has never caught him lying to her. Tr. at 61. She stated that the Individual is “a very honest person” who generally follows the rules. Tr. at 64-65. As to the Individual’s misstatements regarding his alcohol use, she stated that he told her that “he forgot” the incident. Tr. at 66.

#### **C. The Individual’s Brother-in-Law**

The Individual’s brother-in-law has known the Individual for 47 years, since the Individual was a child. Tr. at 48. The Individual used to be involved in community organizations and never acted improperly. *Id.* The Individual’s brother-in-law believes the Individual to be a “responsible, loyal, and trustworthy citizen.” Tr. at 51. He has never known the Individual to lie or withhold information because it might be embarrassing. Tr. at 53.

#### **D. The Individual’s Friends**

Friend No. 1 assisted the Individual during the hearing. He described the Individual as “hard-working, loyal, community-minded, culturally insightful, responsible, [and] dependable.” Tr. at 20-21. He added that the Individual “has incredibly good credit, which is a universal standard in society of responsibility.” Tr. at 21. The friend stated that the Individual is a “team-player” and “always goes the extra mile.” *Id.* Regarding the Individual’s false or incomplete statements to DOE, the friend stated “those are weird things that he did, stupid things that he did” but he believed that did not mean the Individual was “a risk.” Tr. at 22.

Friend No. 2 met the Individual approximately 28 years ago through their involvement in a community organization. Tr. at 25. While involved in the organization, they interacted at least once a week. However, the organization disbanded nearly 20 years ago and they have had infrequent contact since then. Tr. at 41. The Individual was the treasurer of the organization, responsible for large sums of money, and proved himself to be trustworthy. Tr. at 27, 35. Friend No. 2 believes the Individual is an honest person and he has never known the Individual to lie. Tr. at 37, 42.

#### **E. The Psychologist**

The Psychologist evaluated the Individual “around the year 2000” in conjunction with the Individual’s prior administrative review proceeding, which focused primarily on whether the Individual had an alcohol problem. Tr. at 70. In preparation for this administrative review proceeding, the Individual contacted the psychologist in order to obtain a follow-up evaluation in

May 2008. *Id.* The psychologist did not recall forming an opinion regarding the Individual's honesty during the evaluation in 2000. Tr. at 81. The psychologist did not render a specific opinion regarding the Individual's honesty at present. He did state, however, that it was possible that the Individual misunderstood the questions on the QNSP. Tr. at 79.

### III. STANDARD OF REVIEW

The regulations governing the Individual's eligibility for an access authorization are set forth in 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security clearance determinations should err, if they must, on the side of denials").

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a).

### IV. ANALYSIS

#### A. The Security Concerns

As stated above, Criterion F concerns involve false statements or misrepresentations by an individual during the course of an official inquiry regarding the individual's eligibility for access authorization, including responses during personnel security interviews or on security questionnaires. Such statements or misrepresentations raise serious doubts regarding the individual's honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent that individual can be trusted again in the future. See, e.g., *Personnel Security Hearing, Case No. VSO-0013*, 25 DOE ¶ 82,752 at 85,515 (1995); *Personnel Security Hearing, Case No. VSO-0281*, 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000).

Similarly, Criterion L concerns refer to conduct tending to show that the Individual was “not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l).

Given the Individual’s incomplete or inaccurate answers throughout the security clearance process, the LSO had ample grounds to invoke Criteria F and L. The only issue remaining, then, is whether the Individual has adequately mitigated the security concerns. Because the Criteria F and L concerns arise from the Individual’s falsifications or misrepresentations, I will address them together.

## **B. Mitigating Factors**

In order to adequately mitigate Criterion F and L concerns, an individual has the burden of convincing the Hearing Officer that he can be trusted to be honest and forthright with DOE in the future. In addition, in a case such as this, an individual must demonstrate a significant pattern of responsible behavior in order to resolve the Criterion F and L concerns. *See, e.g. Personnel Security Hearing, Case No. TSO-0411*, 29 DOE ¶ 83,050 (2007); Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House, Guideline E, ¶ (c), Guideline F, ¶¶ (a), (c), (d).

In this case, the Individual testified that he did not intentionally withhold information from or provide incorrect answers to the DOE. He attributed his incorrect or incomplete answers to faulty memory, fear that he would not obtain a clearance, misunderstanding of questions, and incorrect assumptions regarding security reporting requirements. The Individual stated that he understood that he would have to be more careful in completing QNSP’s in the future and ensuring that the information he provided to DOE was accurate and complete. In addition to the Individual’s testimony, the Individual’s girlfriend, two friends, and brother-in-law, believed the Individual to be an honest person who was trustworthy and reliable. Given the fact that he did not have a treating relationship with the Individual or know the Individual well, the psychologist spoke only in generalities and, thus, was unable to provide any information useful in reaching my determination.

Based on the evidence before me, I am unable to find that the Individual has mitigated the security concerns in this case. First, I find not credible the Individual’s explanation for the incorrect information he provided regarding his February 2004 alcohol use. On the one hand, when questioned regarding the information provided in the October 2004 Letter for Reconsideration, the Individual stated that he “forgot” the incident until a day or so after he mailed the letter and he decided to wait until he was asked for about it in an interview. However, given the opportunity to rectify the lie on the December 2005 QNSP, the Individual admitted he had the drink but chose to lie about the circumstance under which he took the drink because he was afraid he would not obtain a security clearance. This explanation does little to support his contention that he did not knowingly or intentionally withhold information from the DOE.

Similarly, I am not persuaded by the Individual's explanation for his inconsistent statements to the DOE consultant-psychiatrists. The Individual admitted that, during his interview with the first psychiatrist, the psychiatrist had been questioning him about his personal background in general. Despite this, he then maintained that he believed the first psychiatrist was only referring to his history of drug use while employed. Rather than a legitimate explanation, this appears to be an attempt by the Individual to deflect attention from his falsehood by blaming the psychiatrist for the manner in which he asked the question. Given that the Individual has been willing in the past to provide false or half answers, as on the December 2005 QNSP, because he was afraid of the impact the truth would have on his ability to secure a clearance, I am not convinced by his explanation here.

Finally, I find the Individual's explanation of his omission of significant information on the QNSP unpersuasive. The Individual gave the following rationale for providing incomplete information in his answer to Question 23: he only listed the 1997 DWI arrest because (1) he knew he had to list something in response to the question and the 1997 arrest was the most recent, (2) there was no room to list all four arrests, and (3) DOE already knew about the others. These explanations are untenable. First, on a prior QNSP, the Individual also listed only one of his four arrests, but it was not the most recent. Therefore, he has not been consistent in the arrests he has omitted on security forms. Second, the Individual attached a page to the December 2005 QNSP to provide additional information in response to other questions. Therefore, it stands to reason that he was aware that he could attach additional pages to the form and could easily have done so in response to Question 23. Finally, the Individual admitted that he "just assumed" he could omit previously reported information and that he was not especially careful while completing the QNSP.

Despite the testimony of the Individual's witnesses that he is a generally honest person, I am not convinced that his omission or falsification of information provided to DOE was not intentional. The Individual's explanations simply stretch the bounds of credulity. However, even assuming the Individual's explanations to be true, they demonstrate an overwhelmingly lax attitude toward security reporting requirements that raises serious concerns regarding the Individual's trustworthiness and reliability. Such a careless attitude is unacceptable in DOE clearance holders.

## **V. CONCLUSION**

Upon consideration of the record in this case, I find that there was evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criteria F and L. I also find that there is insufficient evidence in the record to fully resolve those doubts. Therefore, I cannot conclude that granting the Individual an access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R.

§ 710.7(a). Accordingly, I find that the Individual's request for an access authorization should not be granted at this time.

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: August 20, 2008